

Representation and Hearing

[3] At the hearing, the Appellant was represented **Mr. Kiribwa Simon Peter** from M/s F.X. Ogwado & Co. Advocates while the Respondent was represented by **Ms. Anxious Atumanya** from M/s Pearl Advocates & Solicitors. It was directed by the Court that the hearing proceeds by way of written submissions. However, only Counsel for the Respondent made and filed their submissions; which I have considered in the determination of the matter.

Grounds of Appeal

[4] The Appellant raised two (2) grounds in the Memorandum of Appeal, namely;

a) That the learned Trial Magistrate erred in law and fact in holding that the Appellant's application for leave to appear and defend did not raise any bona fide triable issues of law or fact.

b) That the learned Trial Magistrate erred in law and fact when she failed to properly evaluate evidence and arrived at a wrong conclusion resulting into a serious miscarriage of justice.

Duty of the Court on Appeal

[5] The duty of a first appellate court is to scrutinize and re-evaluate the evidence on record and come to its own conclusion and to a fair decision upon the evidence that was adduced in a lower court. See: *Section 80 of the Civil Procedure Act Cap 71*. This position has also been re-stated in a number of decided cases including *Fredrick Zaabwe v Orient Bank Ltd CACA No. 4 of 2006*; *Kifamunte Henry v Uganda SC CR. Appeal No. 10 of 1997*; and *Baguma Fred v Uganda SC Crim. App. No. 7 of 2004*. In the latter case, **Oder, JSC** stated thus:

"First, it is trite law that the duty of a first appellate court is to reconsider all material evidence that was before the trial court, and while making

allowance for the fact that it has neither seen nor heard the witnesses, to come to its own conclusion on that evidence. Secondly, in so doing it must consider the evidence on any issue in its totality and not any piece in isolation. It is only through such re-evaluation that it can reach its own conclusion, as distinct from merely endorsing the conclusion of the trial court”.

Consideration of the Grounds of Appeal

[6] Counsel for the Respondent argued both grounds concurrently. I will adopt the same approach.

Submissions by Counsel for the Respondent

[7] Counsel for the Respondent submitted that the trial magistrate properly evaluated the evidence and correctly found that the Appellant’s application for leave to appear and defend the suit did not raise any bona fide triable issues. Counsel submitted that the court considered the Appellant’s claim that she was not indebted to the Respondent and she had instead made a barter exchange of her car with that of the Respondent. Counsel concluded that the trial magistrate evaluated all the evidence and rightly found that all the Appellant had were mere allegations with no evidence to establish any triable issues as to warrant grant of unconditional leave to appear and defend the suit.

Determination by the Court

[8] The claim in the summary suit was based on an agreement dated 25th August 2017 for sale of motor vehicle Registration No. UBA 547N at an agreed price of UGX 22,000,000/= whereupon a deposit of UGX 8,000,000/= was made leaving a balance of UGX 14,000,000/= payable by 25th November 2017. It was stated by way of affidavit evidence that the Appellant/defendant made a further payment of UGX 2,000,000/= towards the balance leaving an outstanding balance of UGX 12,000,000/= which was the sum claimed in the summary suit. While replying to the application for leave to appear and defend

the suit, the Respondent denied ever entering into a contract of barter exchange of vehicles as alleged by the Appellant. He also denied the allegation of arrest and detention of the Appellant as being mere false hoods.

[9] In the application for leave to appear and defend, the Appellant claimed that the agreement was for purchase of the Respondent's motor vehicle at a price of UGX 20,000,000/= and not UGX 22,000,000/= as alleged in the suit. The Appellant further claimed that the mode of payment was by way of a barter exchange of her car valued at UGX 10,000,000/= with the Respondent's motor vehicle valued at 20,000,000/= and the balance of UGX 10,000,000/= was to be paid in a period of six months. The Appellant stated that she paid UGX 2,000,000/= to the Respondent's agents leaving a balance of UGX 8,000,000/=. She claimed that upon default, the Respondent increased the price by UGX 2,000,000/= as a penalty for late payment which the Appellant objected to. She stated that the Respondent reported a case of theft to police whereupon she was arrested and detained for three days. The appellant also stated that the agreement relied upon by the Respondent was forged since she never executed any written document. She concluded that she had a good and meritorious defence and the application disclosed triable issues of fact and law which ought to be determined on their merit.

[10] In her ruling, the learned trial Magistrate reviewed the evidence and submissions of the parties' counsel and found that no bona fide triable issue of fact or law had been disclosed by the Appellant. The trial Magistrate dismissed the application and entered judgment and decree in the summary suit.

[11] The position of the law in accordance with Order 36 rule 4 of the Civil Procedure Rules is that unconditional leave to appear and defend a suit will be granted where the applicant shows that he or she has a good defence on the merits; or that a difficult point of law is involved, or that there is a dispute which ought to be tried, or a real dispute as to the amount claimed which

requires taking an account to determine, or any other circumstances showing reasonable grounds of a bona fide defence. The applicant ought to demonstrate to court that there are issues or questions of fact or law in dispute which ought to be tried. The procedure is meant to ensure that a defendant with a triable issue is not shut out. See: *M.M.K Engineering v Mantrust Uganda Ltd HC Misc. Application No. 128 of 2012* and *Bhaker Kotecha v Adam Muhammed [2002] EA 112*.

[12] On the case before me, contrary to the contention by the Appellant that the parties entered into an agreement involving a barter exchange of their vehicles to cover part of the purchase price, the Appellant adduced no evidence of such arrangement on her affidavit in support of the application beyond her bare averments or by way of attachment on the proposed written statement of defence. On the other hand, the Respondent adduced evidence by way of a sale agreement signed by both parties. The claim by the Appellant that no such agreement was executed between the parties and that the agreement relied on by the Respondent was forged was rightly disbelieved by the trial magistrate since the same was neither pleaded in the proposed written statement of defence nor verified by any evidence. The learned trial magistrate correctly relied on the settled legal position of the law to the effect that, except in specified circumstances, oral evidence is incapable of altering or contradicting documentary evidence. The facts of the present case disclosed no exception to the parole evidence rule. See: *Sections 91 and 92 of the Evidence Act* and the decisions in *Andrew Akol Jacha v Noah Doka Onzivua, HCCA No. 0001 of 2014* and *DSS Motors Ltd vs Afri Tours and Travels, HCCS No. 12 of 2003 [2006] UGCOMC 27*.

[13] In the circumstances, the Appellant did not demonstrate to the trial court that she had a good defence on the merits of the case or any bona fide triable issue of fact or law as to enable the court exercise discretion to grant leave to

appear and defend the summary suit. The learned trial magistrate was therefore right in reaching the conclusion that she did. As such, both grounds of appeal bear no merit and they fail.

[14] In the premises, the appeal accordingly fails and is dismissed with orders that;

- a) The ruling and orders of the learned trial Magistrate are upheld and the judgment and decree entered in Civil Suit No. 622 of 2018 shall be enforced.
- b) The Appellant shall pay the outstanding balance on the decretal sum to the Respondent.
- d) The costs of this appeal and of the proceedings in the lower court shall be paid by the Appellant.

It is so ordered.

Dated, signed and delivered by email this 31st day of January, 2024.

A handwritten signature in blue ink, appearing to read 'Boniface Wamala', with a long horizontal flourish extending to the right.

Boniface Wamala

JUDGE